

**NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.**

**Only the most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC's office in Suite 101 of the State Capitol Building North.**

## FISCAL IMPACT REPORT

SPONSOR: Vaughn DATE TYPED: 02/04/02 HB 138/sHCPAC  
 SHORT TITLE: Daily Moment of Silence in Public Schools SB \_\_\_\_\_  
 ANALYST: Baca

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
	NFI				

(Parenthesis) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

State Department of Education (SDE)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of HCPAC Amendment

The HCPAC amendment strikes "the free exercise of religion" from the bill title and wherever else the terms appear in the bill.

#### Synopsis of Original Bill

House Bill 138 amends the Public School Code to require the State Board of Education (SBE) to, in turn, require local schools to observe a daily minute of silence among the school children.

#### Significant Issues.

The requirement of a moment of silence gives rise to the applicability of religious freedom guarantees. In its analysis, the AGO references the continued evolution of prayer/silence in the nation's court systems. Citing *Duffy versus Las Cruces Public Schools*, the AGO concludes that "Duffy not only suggests the uncertainty of federal law on the point, it also casts plausible doubt on the constitutionality of HB 138 relative to state law. If the legislature chooses to pass HB 138, the likelihood of legal challenge is high and the likelihood of success of that legal challenge is not insignificant."

The SDE, on the other hand states that “This bill is clearly unconstitutional and would violate the First Amendment to the federal Constitution which prohibits laws that establish religion or prohibit the free exercise thereof. It would also violate the “free speech” clause in that it requires students to have a moment of silence. Additionally and concurrently, it would run afoul of Article II (“Bill of Rights”) of the New Mexico Constitution, which also guaranties free speech and prohibits compelled adherence to any religious practice.”

**POSSIBLE QUESTIONS**

1. Does the sponsor have any evidence suggesting this bill would be constitutional ?
2. Have parents been asked to express an opinion on this bill ?
3. Have local school board members and\or school administraotors and been asked thier opinion-regarding this bill ?

LB/njw:ar